

# ACCOMMODATION DISCRIMINATION

KATHERINE MACFARLANE\*

*Reasonable accommodations should be tools of equality yet can feel more like punishment than remedy. To receive accommodations, people with disabilities must disclose intimate details about their health. The accommodation process that follows disclosure is arduous, dissuading many people with disabilities who need accommodations from requesting them.*

*Even if accommodations are granted, institutional enforcement is not guaranteed. Instead, the labor of implementing reasonable accommodations often falls to disabled people themselves. Accommodated people with disabilities also endure remarks about receiving “special” treatment for disabilities that are allegedly exaggerated or faked. Though people with disabilities may bring failure to accommodate claims when reasonable accommodations are denied, the law does not adequately protect them against the discrimination that occurs when accommodations are granted. This Article identifies experiences deeply familiar to people with disabilities to explore how rules intended to perpetuate equality foster discrimination. It focuses on reasonable accommodations in the workplace and higher education to highlight the mistreatment of accommodated people with disabilities.*

---

\* Associate Professor of Law and Director, Disability Law and Policy Program, Syracuse University College of Law. During the 2022–23 academic year, the Author served as Special Counsel for Disability Rights in the U.S. Department of Education’s Office for Civil Rights and focused on amending the regulations implementing Section 504 of the Rehabilitation Act of 1973. I thank Alyson Acheson, Doron Dorfman, Victoria Haneman, and Jesus Rodriguez for their support. I also thank the *American University Law Review* editors for their wonderful work on this piece. Finally, I am grateful to the disabled students and colleagues who trusted me with their stories and inspired this Article.

## TABLE OF CONTENTS

Introduction.....	1972
I. The Reasonable Accommodation Timeline.....	1976
II. Reasonable Accommodations in the Workplace .....	1982
A. The Workplace Accommodations Ideal .....	1983
B. Workplace Accommodation Discrimination.....	1985
III. Reasonable Accommodations in Higher Education.....	1992
A. The Academic Accommodations Ideal.....	1993
B. Higher Education Accommodation Discrimination.....	1995
IV. The Missing Law of Accommodation Discrimination ..	2004
A. Disclosure of Confidential Disability Information.	2005
B. Hostile Work and Educational Environments .....	2007
C. Failure to Accommodate .....	2009
Conclusion .....	2013

## INTRODUCTION

The Americans with Disabilities Act (ADA)<sup>1</sup> was designed to radically reshape public and private spaces. Its reasonable accommodation mandate is crucial to fulfilling that promise.<sup>2</sup> Accommodations alter structures and policies to ensure that people with disabilities integrate into society.<sup>3</sup> But the process through which reasonable accommodations are obtained can make accommodations feel more like punishment than remedy, isolating people with disabilities from their nondisabled peers. This Article describes how obtaining reasonable accommodations is difficult, demoralizing, and ultimately discriminatory, even when the end result is the originally requested accommodation.

To understand why requires a shift in perspective. Traditionally, the reasonable accommodation process is described as beginning with an accommodation request and ending with a decision that grants or denies it. According to this narrative, federal regulations and agencies

---

1. 42 U.S.C. § 12101.

2. Laura L. Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043, 1063 (2004).

3. Mark C. Weber, *Unreasonable Accommodation and Due Hardship*, 62 FLA. L. REV. 1119, 1122 (2010). I refer to “people with disabilities” and “disabled people” to reflect the disabled community’s preferences.

guide how accommodation requests are evaluated.<sup>4</sup> Employers and schools develop helpful forms that people with disabilities complete,<sup>5</sup> and straightforward reasonable accommodation policies that people with disabilities follow.<sup>6</sup> Health care providers, usually doctors, carefully verify disability and recommend which accommodations should be made.<sup>7</sup> From this perspective, obtaining an accommodation is a victory. If a reasonable accommodation request is denied, the ADA offers legal recourse, so long as the requested accommodation posed no undue burden.<sup>8</sup>

But a perspective informed by the lived experiences of people with disabilities reveals a reasonable accommodation process with additional, complex steps, rife with discrimination. To identify where and how accommodation discrimination occurs, we must first adjust the starting point. Though the law treats a request for reasonable accommodation as the beginning of the reasonable accommodation

---

4. Katherine A. Macfarlane, *Disability Without Documentation*, 90 FORDHAM L. REV. 59, 67 (2021) (describing the regulations and agency guidance designed to govern reasonable accommodations and the interactive process, through which reasonable accommodations in the workplace are negotiated).

5. See, e.g., ACCOMMODATIONS AND SUPPORT, BENNINGTON COLL., ACADEMIC SERVS., <https://www.bennington.edu/academic-services/accommodations-and-support> [<https://perma.cc/BAS8-LHQ2>]; *Employee ADA Form: Workplace Accommodations*, LA. STATE UNIV. OFF. OF FIN. & MGMT., [https://www.lsu.edu/hrm/employees/employee\\_resources/Americans\\_With\\_Disabilities\\_Act.php](https://www.lsu.edu/hrm/employees/employee_resources/Americans_With_Disabilities_Act.php) [<https://perma.cc/Z69H-72VS>].

6. See, e.g., *ADA Reasonable Accommodation Policy*, BROADVIEW FED. CREDIT UNION, <https://www.broadviewfcu.com/policies-and-disclosures/ada-reasonable-accommodation-policy> [<https://perma.cc/Z4XM-HGHP>]; *Student Services Request and Accommodation Agreement*, UNIV. CAL. L.A. CTR. FOR ACCESSIBLE EDUC., <https://cae.ucla.edu/students/accommodation-requests/accommodation-agreement> [<https://perma.cc/MNM5-TJRD>].

7. See, e.g., *Reasonable Accommodation (RA) – Employee*, WASH. STATE DEP'T OF ENTER. SERVS., <https://des.wa.gov/services/hr-finance-lean/small-agency-services/small-agency-hr/hr-toolkit/employee-toolkit/reasonable-accommodation> [<https://perma.cc/M6F3-B9FS>]; *Documenting a Psychiatric Disability*, UNIV. OF SAN DIEGO, <https://www.sandiego.edu/disability/documentation/psy.php> [<https://perma.cc/BEZ3-Z9LU>].

8. 42 U.S.C. § 12112(b)(5)(A) (stating that the failure to make “reasonable accommodations” to an otherwise qualified individual’s “known physical or mental limitations” constitutes disability discrimination “unless [a] covered entity can demonstrate that the accommodation would impose an undue hardship” on the covered entity’s business).

process,<sup>9</sup> people with disabilities must take several preliminary steps before a request is made. First, they must decide whether to disclose their disability, weighing the benefits of disclosure against its costs, including the stigma their disclosure may be met with.<sup>10</sup> Next, they must determine how and when they will complete the accommodation process.<sup>11</sup> Planning is complicated by disability's unpredictability.

These initial steps are difficult; however, the steps that follow are described by disabled people as onerous, emotionally taxing, and punitive.<sup>12</sup> At work and at school, the entities that grant accommodations do not always enforce them.<sup>13</sup> Accommodations may be implemented one year but not the next.<sup>14</sup> Accommodations then become DIY projects that people with disabilities must see through on their own.<sup>15</sup> People with disabilities also endure hateful remarks

---

9. *Iqbal v. City of Pasadena*, 542 F. Supp. 3d 566, 575 (S.D. Tex. 2021) (stating that “[a]n employee’s request for an accommodation triggers an obligation on behalf of the employer to engage with good faith in an interactive process to identify an appropriate accommodation” (quoting *Jurach v. Safety Vision, LLC*, 642 F. App’x 313, 318 (5th Cir. 2016))).

10. See *infra* notes 111–15 and accompanying text.

11. See *infra* note 105 and accompanying text.

12. See *infra* Parts II–III; Nathaniel Levy, *Workplace Ableism is a Problem for ADA Rights*, ONLABOR (June 19, 2019), <https://onlabor.org/workplace-ableism-is-a-problem-for-ada-rights> [<https://perma.cc/WU87-268V>] (describing “the stigma of workplace ableism, the labor of self-advocacy, and the associated emotional challenges” experienced by people with disabilities at work); Kat L., *It Shouldn’t Be This Hard to Get Disability Accommodations at University*, MIGHTY, <https://themighty.com/2022/02/hard-to-get-disability-accommodations-chronic-illness-university> [<https://perma.cc/9YM6-AU7Z>] (last updated Nov. 9, 2022) (stating that disabled people should not “have to spend several days and dozens of emails and phone calls in order to get just a tiny bit of lenience so that [they] have a fighting chance of finishing [their] degrees”); Aubrie Lee, *20 Questions for Disability-Inclusive Employers*, DISABILITY VISIBILITY PROJECT (Oct. 12, 2021), <https://disabilityvisibilityproject.com/2021/10/12/20-questions-for-disability-inclusive-employers> [<https://perma.cc/ZHP9-PG2D>] (describing how people with disabilities should not be required to pay “the triple tax of physical inaccessibility, social exclusion, and advocacy labor”); Aparna R., *The Burden and Consequences for Self-Advocacy for Disabled BIPOC*, DISABILITY VISIBILITY PROJECT (July 19, 2020), <https://disabilityvisibilityproject.com/2020/07/19/the-burden-and-consequences-of-self-advocacy-for-disabled-bipoc> [<https://perma.cc/PZX3-SREF>] (discussing the burden that self-advocacy places on people with disabilities).

13. See *infra* notes 87–88 and accompanying text.

14. See *infra* note 163–73 and accompanying text.

15. It is also difficult to predict whether accommodations available one day will remain in place the next, as demonstrated by reasonable accommodation policies related to the COVID-19 pandemic, which are constantly in flux. See Linus Miller,

insinuating that their accommodations are unnecessary and give them an unfair advantage.<sup>16</sup> They are referred to as snowflakes, tricksters, and fakers.<sup>17</sup> These experiences can be humiliating. They also discourage others who need reasonable accommodations from seeking them.

The law does not perfectly capture the inequality identified in this Article, even though it is inherent in the reasonable accommodation process.<sup>18</sup> For example, a granted accommodation cannot form the basis of a failure to accommodate claim.<sup>19</sup> Stray remarks may not rise to the level of harassment that hostile environment claims require.<sup>20</sup> This particular discrimination is something different, a collection of individual and structural discrimination that thus far lacks a legal framing.

This Article's exploration of a broken system is the first step toward fixing it. Following this introduction, Part I reshapes the reasonable

---

*Miller: CWRU Refuses to Allow Remote Accommodations for Disabled Students During the Pandemic*, OBSERVER (Jan. 21, 2022), <https://observer.case.edu/miller-cwru-refuses-to-allow-remote-accommodations-for-disabled-students-during-the-pandemic> [<https://perma.cc/ZA9U-A5GY>] (describing how Case Western Reserve University “is denying almost all undergraduate students’ requests for remote attendance accommodations in the very same semester during which almost the entire school is spending the first two weeks learning online”); Tom Hals, *U.S. Workplaces Look to College Fights as Return to Work ‘Turning Point’ Looms*, REUTERS (Sept. 7, 2021), <https://www.reuters.com/world/us/us-workplaces-look-college-fights-return-work-turning-point-looms-2021-09-07> [<https://perma.cc/Y7SC-QA34>] (describing how “[w]orking from home during the pandemic allowed teachers with conditions ranging from epilepsy to genetic diseases to eliminate the need for specialized transport, add periods of rest to their day and ensure easy access to medicines,” but “[a]s the new academic year begins, many are finding themselves fighting with administrators and having remote work requests denied”).

16. See *infra* note 169 and accompanying text.

17. *Infra* notes 99, 224–27 and accompanying text.

18. See *infra* Part IV; Shirley Lin, *Bargaining for Integration*, 96 N.Y.U. L. REV. 1826, 1847 (2021) (stating that “[a]ntidisability animus that follows employees’ disclosure of their disabilities during the interactive process is not addressed in the procedural aspects of the regulations and agency guidance”); Jack Trammell, *Postsecondary Students and Disability Stigma: Development of the Postsecondary Student Survey of Disability-Related Stigma (PSSDS)*, 22 J. POSTSECONDARY EDUC. & DISABILITY 106 (2009) (stating that “the law is not capable of eliminating the special treatment stigma that often accompanies receiving academic accommodations”); Nicole Buonocore Porter, *Special Treatment Stigma in Higher Education*, REG. REV. (Oct. 27, 2021), <https://www.theregreview.org/2021/10/27/buonocore-porter-special-treatment-stigma-in-higher-education> [<https://perma.cc/5YQR-KNU8>] (discussing special treatment stigma in higher education).

19. See *infra* notes 236–53 and accompanying text.

20. See *infra* note 226 and accompanying text.

accommodation timeline, extending it beyond the conventional version to reflect the experiences of people with disabilities. Part II identifies the discrimination inherent in workplace reasonable accommodation processes. There, it builds upon Elizabeth Emens' disability admin theory, through which Emens illustrates the largely invisible labor people with disabilities must perform to secure anti-discrimination laws' protections.<sup>21</sup> It is also informed by Carrie Griffin Basas' studies of the social inequality high-status employees with disabilities experience,<sup>22</sup> and Nicole Porter's exploration of the "special treatment stigma" that follows accommodated employees with disabilities.<sup>23</sup> Part III similarly explores the discrimination inherent in higher education's reasonable accommodation processes.

Part IV details how present formulations of disability discrimination claims do not provide an adequate remedy for accommodation discrimination.

The Article concludes by describing the impact of compromised reasonable accommodation processes, focusing on how educational barriers limit employment opportunities, financial security, and self-fulfillment.

#### I. THE REASONABLE ACCOMMODATION TIMELINE

People with disabilities who request and obtain reasonable accommodations experience discrimination throughout the accommodation process. To understand where that discrimination occurs, the process must be captured in full. This Part expands the reasonable accommodation timeline to accurately describe the full experience people with disabilities endure.

The process does not kick off with a request for reasonable accommodations. Rather, it begins with two preliminary steps. First, a disabled person must choose to disclose their disability,<sup>24</sup> a decision

---

21. Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329 (2021).

22. Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER, L. & JUST. 32 (2010).

23. Nicole Buonocore Porter, *Special Treatment Stigma After the ADA Amendments Act*, 43 PEPP. L. REV. 213 (2016).

24. The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities of such individual." 42 U.S.C. § 12102(1). The Rehabilitation Act adopts the ADA's definition of disability. 29 U.S.C. § 705 (stating that "the term 'individual with a disability' means . . . any person who

complicated by the stigma that attaches to disability.<sup>25</sup> Disabled people are still treated as “less than normal,” and subjected to “exclusion, prejudice, stereotyping, and neglect.”<sup>26</sup> As a result, some people with disabilities only disclose when they obtain job security, like tenure.<sup>27</sup> Disclosure anxiety can be so overwhelming that those who are eligible for accommodations forego them.<sup>28</sup>

Exactly what disclosure entails depends on the nature of one’s disability.<sup>29</sup> Visible disabilities, broadly speaking, can be “immediately perceived or identified by others,” but invisible disabilities “might require a proactive disclosure or longer-term interaction in order to be ‘seen.’”<sup>30</sup> Even people with visible disabilities face a disclosure

---

has a disability as defined in § 12102 of Title 42”). The Americans with Disabilities Amendments Act of 2008 was enacted to ensure that courts “interpret[ed] the definition [of disability] broadly so as to be applicable to the maximum extent possible.” Allison Ara, Comment, *The ADA Amendments Act of 2008: Do the Amendments Cure the Interpretation Problems of Perceived Disabilities?*, 50 SANTA CLARA L. REV. 255, 270 (2010).

25. Griffin Basas, *supra* note 22, at 85–86 (describing the various forms of stigma that attach to an initial reasonable accommodations request: “[f]irst is the stigma of asking,” because “[w]hen an employee with a disability has to request assistance, she may feel as if she is admitting to a flaw or shortcoming,” and second is “the shame of difference”).

26. Nicole Buonocore Porter, *Disclaiming Disability*, 55 U.C. DAVIS L. REV. 1829, 1858 (2022). Internalized stigma can have devastating litigation consequences. *Id.* at 1831, 1855. Porter has identified cases in which disabled plaintiffs downplay or deny their disabilities due to “the stigma of being labeled as ‘disabled’ and the fear of vulnerability that attaches to claiming a disability,” which courts then rely on as evidence that plaintiffs are not disabled. *Id.*

27. Katie Pryal, *Disclosure Blues: Should You Tell Your Colleagues About Your Mental Illness?*, CHRONICLE OF HIGHER EDUC. (June 13, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4158926](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4158926) [<https://perma.cc/8R6W-87PT>] (describing how Drexel University professor Lisa McElroy did not disclose her disability until receiving tenure because she was “incredibly afraid” of how she would be perceived, and before tenure “just didn’t feel safe”).

28. Michael Z. Green, *Mediating Psychiatric Disability Accommodations for Workers in Violent Times*, 50 SETON HALL L. REV. 1351, 1364–65 (2020) (explaining that people with invisible psychiatric disabilities may go even further, working actively to keep their disabilities hidden).

29. Christopher L. Griffin, Jr., *Explaining ADA Employment Discrimination Charges over the Business Cycle*, 84 U. CIN. L. REV. 737, 757–58 (2016) (stating that “[d]isabilities arise in so many combinations and forms that they appear highly individualized and specific to the outsider’s eyes”).

30. Katherine L. Moore, *Pain Is Enough: Chronic Pain as Disability*, 69 BUFF. L. REV. 1471, 1510 (2021). Also, the line between visible and invisible disabilities “is not always clear-cut,” as “visibility can be subjective and change over time.” *Id.*

dilemma in the context of reasonable accommodations, where their disclosure divulges their needs, or otherwise hidden aspects of their disability, such as their experience with pain.<sup>31</sup>

Any discussion of disclosure anxiety must acknowledge that many people with disabilities take immense pride in their disabled identity and disclose freely.<sup>32</sup> Disclosure can be cathartic.<sup>33</sup> A growing body of scholarship has emphasized the transformative power of increasing the number of people who identify as disabled, or as Katie Eyer puts it, who claim disability.<sup>34</sup> Eyer describes the many positive aspects of claiming disability identity, which include joining a vibrant community “that celebrates the strength of people with disabilities and foregrounds the creative and diverse ways in which people with disabilities navigate the abled environment.”<sup>35</sup> Jasmine Harris has also challenged the assumption that disability privacy is best, arguing that privacy “prevent[s] the development of . . . an accurate common base of knowledge about disability,” including knowledge that would counter negative stereotypes.<sup>36</sup>

---

31. For example, a teacher who uses a wheelchair may experience non-obvious hand pain after writing on a whiteboard for several hours. She may need an accommodation that provides her with a break from teaching in the middle of the workday to allow her to rest her hands and avoid additional pain. Absent her accommodation request, her hand pain would not be obvious or disclosed.

32. See Joseph Shapiro, *Disability Pride: The High Expectations of a New Generation*, N.Y. TIMES, <https://www.nytimes.com/2020/07/17/style/americans-with-disabilities-act.html> [<https://perma.cc/4VAR-99DR>] (last updated July 20, 2020) (describing how members of the ADA generation, who “grew up knowing the transformative civil rights law as a birthright,” “are quicker than [members of earlier generations] to claim disability as a crucial part of identity” and do so “with pride”); Brittney McNamara, *Twitter Trend #DisabledAndCute is Empowering Disabled People*, TEEN VOGUE (Feb. 15, 2017), <https://www.teenvogue.com/story/disabled-and-cute-empowering-hashtag> [<https://perma.cc/P2TW-RJZ4>] (describing how writer Keah Brown started #DisabledAndCute to champion loving and accepting disabled bodies).

33. Jared Gilman, *Disability or Identity?: Stuttering, Employment Discrimination, and the Right to Speak Differently at Work*, 77 BROOK. L. REV. 1179, 1207 (2012) (stating that “disclosure may be a positive step for people with psychiatric disabilities, as it ‘may enhance self-esteem, diminish shame, permit coworkers and others to offer support, and even empower another individual’s revelation’” (quoting LAURA LEE HALL, *Making the ADA Work for People with Psychiatric Disabilities*, in MENTAL DISORDER, WORK, DISABILITY, AND THE LAW, 241 (Richard J. Bonnie & John Monahan eds., 1997))).

34. Katie Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 580–81 (2021).

35. *Id.* at 588.

36. Jasmine E. Harris, *Taking Disability Public*, 169 U. PA. L. REV. 1681, 1687 (2021); see also Griffin Basas, *supra* note 22, at 56–57 (describing how “the pressures to pass

This important work is not undermined by grappling with the nature of disclosure in the context of reasonable accommodations. In the accommodation context, disclosure is something different than the affirming disclosure of disability identity. It is not optional and may feel coerced. Disability identity, by contrast, can be claimed independent of a reasonable accommodation request, avoiding the misery that accompanies accommodation processes.

The reasonable accommodation context also alters disclosure's impact. With respect to disclosure for the purpose of claiming disability, "increased disability self-identification" can result in "exposure to counterstereotypical exemplars."<sup>37</sup> As Eyer explains, "if people with disabilities are stereotyped as inherently incapable of being successful and productive, greater exposure to disabled individuals who are highly successful in their careers could be a potent way of deconstructing those biases."<sup>38</sup> I embrace this perspective, and have myself claimed disability as a means of normalizing the identity and inviting others to do the same. I am also aware that my own success is stereotype-busting, and often rely on personal anecdotes in my advocacy work.<sup>39</sup>

However, "[o]ne of the most stubborn forms of disability bias is the presumption that a claim of disability identity is inherently a claim on resources: that all disabled people are 'takers.'"<sup>40</sup> Disclosure in the accommodations context is quintessentially resource-seeking, conveying both who I am (identity) and what I need (resources).

---

and to cover are intensely felt and tangible for disabled women attorneys," but that "[t]he problem is self-perpetuating . . . in the sense that cultures of shame and fear around disability cause fewer people to identify with the label, and therefore, opportunities are missed to make disability commonplace, familiar, and comfortable to nondisabled people").

37. Eyer, *supra* note 34, at 582.

38. *Id.*

39. I do not mean to suggest that people with disabilities are deserving of access because they have the potential to overachieve and outcompete their nondisabled peers. Meaningful access is for everyone, from the average to the extraordinary.

40. Eyer, *supra* note 34, at 603, 604 (stating that "the presumption that disability universally and inherently entails claims to extra resources is itself a form of ableism," dependent on "view[ing] disability as intrinsically rooted in incapacity"). In *Claiming Disability*, Eyer also explores how "encouraging greater disability identity might encourage those who are entitled to more significant accommodations, but who currently do not claim them due to a lack of disability self-identification, to do so," and that an increase in this form of resource-seeking should be reframed as a positive externality. *Id.* at 605.

Therefore, this form of disclosure may perpetuate rather than defeat stereotypes.<sup>41</sup>

If a person with disabilities does decide to disclose for purposes of seeking reasonable accommodations, they must next prepare to navigate a complex system. But planning, which in the context of accommodations might include allocating time to complete paperwork related to the reasonable accommodation request, can be thwarted by disability. In her landmark essay *Six Ways of Looking at Crip Time*, disability studies scholar Ellen Samuels explored how “[d]isability and illness have the power to extract us from linear, progressive time . . . and cast us into a wormhole of backward and forward acceleration, jerky stops and starts, tedious intervals and abrupt endings.”<sup>42</sup> Disabled people are often on “crip time,” in which we must “take breaks, even when we don’t want to, even when we want to keep going, to move ahead.”<sup>43</sup> Reasonable accommodation processes with set, immovable deadlines are fundamentally incompatible with crip time.

The need for reasonable accommodations often arises at inopportune moments when disability changes or worsens. In those instances, people with disabilities must prioritize adapting to and treating their new physical and mental symptoms.<sup>44</sup> Managing a severe autoimmune disease flare, for example, may require new reasonable accommodations, but primarily it requires time for medical appointments, treatment, and rest. “Crip time is sick time,”<sup>45</sup> with little time left to complete reasonable accommodation paperwork.

---

41. See Harris, *supra* note 36, at 1748 (stating that increased disclosure might also require “a stronger antidiscrimination safety net to help capture potential discrimination after disclosure”). The complexity of disability stereotypes may also complicate reactions to disclosure. *Id.* at 1690. Some people with disabilities are pitied, while those who are perceived as having overcome their disabilities are heralded. Bradley A. Areheart, *When Disability Isn’t Just Right: The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L.J. 181, 187 (2008).

42. Ellen Samuels, *Six Ways of Looking at Crip Time*, 37 DISABILITY STUDS. Q. 3 (2017) (stating that “we who occupy the bodies of crip time know that we are never linear, and we rage silently—or not so silently—at the calm straightforwardness of those who live in the sheltered space of normative time”).

43. *Id.*

44. *Cf. id.* (describing how an onset of new symptoms converted the author into a person “whose inner clock was attuned to [her] own physical state rather than the external routines of a society ordered around bodies that were not like [hers]”).

45. *Id.*

In addition to changes brought about by disability, unexpected crises like the COVID-19 pandemic can suddenly alter workplace safety, forcing disabled people with conditions like asthma to ask for a work-from-home accommodation for the first time.<sup>46</sup> Additionally, individuals with Long COVID<sup>47</sup> may require accommodations they had never imagined needing before the pandemic.<sup>48</sup> Managing Long COVID is time-consuming and overwhelming. Treatment is the first priority.

Students with disabilities face additional challenges. Embarking on an undergraduate or graduate degree program is a lifechanging experience through which students enter new environments with new demands. That change of circumstance may require reasonable accommodations that a student never needed before. For example, a student with a hearing impairment may need an accommodation in a large, noisy lecture hall that was unnecessary in a small high school classroom. Also, students who experience a “new, changed, or progressing disability” after arriving on campus might require reasonable accommodations for the very first time.<sup>49</sup> Stress exacerbates some disabilities, making the start of college a perfect storm.

Students who received primary and secondary school accommodations through an individualized education program (IEP) or Section 504 Plan must start the reasonable accommodation process all over again in college, “often for the first time without parental representation.”<sup>50</sup> As a result, “at a time of great transition for all young

---

46. Macfarlane, *supra* note 4, at 62; Baylee Kalmbach, *A COVID Silver Lining? How Telework May Be a Reasonable Accommodation After All*, 90 U. CIN. L. REV. 1294, 1311 (2022).

47. *Long COVID or Post-COVID Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION (July 20, 2023), <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html> [<https://perma.cc/Z6B4-3GSD>] (“Long COVID is broadly defined as signs, symptoms, and conditions that continue or develop after initial COVID-19 infection.”).

48. Kalmbach, *supra* note 46, at 1311; *cf.* Linda Carter Batiste, *Workers with Long COVID-19: You May Be Entitled to Workplace Accommodations*, U.S. DEP’T OF LABOR BLOG, (July 6, 2021), <https://blog.dol.gov/2021/07/06/workers-with-long-covid-19-may-be-entitled-to-accommodations> [<https://perma.cc/4SRW-YLAB>] (identifying accommodations an individual with Long COVID may consider requesting at work).

49. Marissa Ditkowsky, *Supporters and Advocates in Disability Accommodations Meetings: Using Title IX as a Framework*, 28 AM. U. J. GENDER, SOC. POL’Y & L. 383, 407 (2020).

50. Marianne DeIpo Kulow & David Missirian, *Building STEPs down the Precipitous Cliff from University to Workplace: A Proposal to Modify Regulation of Higher Education Mental Disability Accommodations*, 24 TEX. J. CIV. LIBERTIES & CIV. RTS. 157, 159 (2019).

adults, students with disabilities beginning university programs are burdened with additional tasks of self-advocacy.”<sup>51</sup>

Thus far, reconsidering when and how the reasonable accommodation process begins has added two steps that precede a request for reasonable accommodations: choosing to disclose and allocating time for the accommodation process. The following Parts identify the discrimination present in the processes that result in reasonable accommodations, and the discrimination a person with disabilities who has been granted accommodations endures.

No matter how necessary these steps may be, they are unique to the disabled experience. While their coworkers are working and their classmates are studying, people with disabilities are busy managing the bureaucracy of reasonable accommodations.

## II. REASONABLE ACCOMMODATIONS IN THE WORKPLACE

This Part describes how the reasonable accommodation process fosters discrimination in the workplace. First, it recounts how the reasonable accommodation process was intended to function, and then contrasts that ideal with the discriminatory way the process actually unfolds.<sup>52</sup> Second, relying on first-hand accounts of accommodation discrimination, it explores how a process that was designed to integrate people with disabilities into the workforce led to their mistreatment at work.

---

51. *Id.*

52. For purposes of this Article, discrimination means “differential treatment of people depending on their group affiliation.” Chaim Fershtman, Uri Gneezy & Frank Verboven, *Discrimination and Nepotism: The Efficiency of the Anonymity Rule*, 34 J. LEGAL STUD. 371, 371–72 (2005). The accommodation discrimination experienced by people with disabilities is both structural and individual. Disclosure requirements and the labor people with disabilities must expend to enforce their accommodations are the result of structures that “allow and encourage discrimination.” *See id.* (contrasting individual discrimination committed by bad actors with discrimination inflicted by structures that invite or perpetuate discrimination). Statements directed at people with disabilities that deride their accommodations and suggest that their disabilities are faked are instances of individual discrimination. However, the conduct described in this Article might also be termed ableism. *See* Sheerine Alemzadeh, *Claiming Disability, Reclaiming Pregnancy: A Critical Analysis of the ADA’s Pregnancy Exclusion*, 27 WIS. J.L., GENDER & SOC’Y 1, 22 n.131 (2012) (defining ableism as “discrimination or prejudice against individuals with disabilities”). I refer to discrimination as opposed to ableism to align with the ADA’s and Section 504’s remedial scheme, which creates remedies for disability discrimination but does not necessarily protect against the broader concept of ableism.

A. *The Workplace Accommodations Ideal*

The ADA was intended to “dismantle the systemic economic and employment discrimination faced by people with disabilities in all work settings.”<sup>53</sup> Inaccessible workplaces presented concrete barriers to people with disabilities’ gainful employment.<sup>54</sup> Therefore, “[t]o meaningfully impact unemployment, the ADA would need to permanently alter the American workplace.”<sup>55</sup>

Title I of the ADA governs employment,<sup>56</sup> and includes an affirmative duty to make reasonable accommodations.<sup>57</sup> The accommodation mandate was the “major tool” that would bring about systemic change.<sup>58</sup> The failure to make a reasonable accommodation to an employee’s “known physical or mental limitations” is disability discrimination, unless the accommodation would cause an undue hardship to the employer’s business.<sup>59</sup> Moreover, only qualified employees—those who can perform the essential functions of their position—must be accommodated.<sup>60</sup>

Both job applicants and current employees are entitled to reasonable accommodations, and the accommodation mandate applies to all aspects of employment, including privileges like employee lounges.<sup>61</sup> An accommodation may take the form of “physical or structural changes” like creating a parking space near a building’s entrance, “reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability,” or “altering when and/or how a function, essential or marginal, is performed.”<sup>62</sup>

The ADA itself does not describe how employers and employees should identify appropriate accommodations, but courts have required an “interactive process” through which accommodations are

---

53. Carrie Griffin Basas, *Back Rooms, Board Rooms—Reasonable Accommodation and Resistance Under the ADA*, 29 BERKELEY J. EMP. & LAB. L. 59, 66 (2008).

54. See Macfarlane, *supra* note 4, at 64.

55. *Id.*

56. 42 U.S.C. §§ 12111–12117.

57. § 12112(b)(5)(A).

58. Griffin Basas, *supra* note 53, at 67.

59. § 12112(b)(5)(A).

60. § 12111(8).

61. Macfarlane, *supra* note 4, at 65.

62. *Id.* (quoting Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the American with Disabilities Act, EEOC Notice No. 915.002 (2002), 2002 WL 31994335).

evaluated and negotiated.<sup>63</sup> Early interpretive guidance from the Equal Employment Opportunity Commission (“EEOC”) advised that the process should be “collaborative,”<sup>64</sup> and that an employer should consult with the employee to “identify possible accommodations” and “assess their potential effectiveness.”<sup>65</sup> The agency guidance also declared that “[i]f ‘two equally effective accommodations are available,’” the employee’s preference controls.<sup>66</sup>

The ADA and its reasonable accommodation mandate were designed to advance the social model of disability.<sup>67</sup> Viewed through that lens, disability is the result of “a social, physical, and educational environment shaped in ways that exclude” people with disabilities.<sup>68</sup> The ADA was intended to break free of the medical model of disability, which “grants tremendous power to health care professionals,” who validate, diagnose, and categorize disability.<sup>69</sup> Under the medical model, “[t]he individual’s own subjective experience of impairment or limitation is irrelevant unless it can be professionally validated.”<sup>70</sup>

I have previously argued that informality and collaboration are no longer part of the interactive process.<sup>71</sup> Instead, the process is similar to civil discovery, with employers acting both as litigation adversary and judge.<sup>72</sup> Employers can ask their disabled employees for extensive medical documentation of disability, and can refuse to accommodate employees who do not provide it.<sup>73</sup> Employees who do not provide medical documentation cannot bring failure to accommodate claims, as their refusal (or inability) to document their disability is treated as

---

63. *Id.* at 66.

64. Griffin Basas, *supra* note 53, at 68 (citing 29 C.F.R. § 1630.9 (2007)).

65. Macfarlane, *supra* note 4, at 67 (quoting Dallan F. Flake, *Interactive Religious Accommodations*, 71 ALA. L. REV. 67, 77 (2019)).

66. *Id.*

67. *Id.* at 68; Katelyn Hefter, *A Belief-Based Approach to Workplace Accommodations*, REGUL. REV. (Mar. 10, 2022), <https://www.theregreview.org/2022/03/10/hefter-belief-based-approach-workplace-accommodations> [https://perma.cc/L9UH-2DKP] (noting that the ADA’s drafters rejected the medical model of disability and de-prioritized medical expertise, and instead “emphasized the idea that an employee’s preferences, knowledge, and experience should drive the accommodations process”).

68. Macfarlane, *supra* note 4, at 70.

69. *Id.* at 68.

70. *Id.* (quoting Mary Crossley, *The Disability Kaleidoscope*, 74 NOTRE DAME L. REV. 621, 650 (1999)) (alteration in original).

71. *See id.* at 83.

72. *Id.* at 84.

73. *Id.* at 69.

a failure to participate in the interactive process.<sup>74</sup> As a result, health care providers and employers, but not disabled people, control which reasonable accommodations employers provide.<sup>75</sup> The medical model lives on in medical documentation requirements, and renders the accommodation process time-consuming, expensive, and demoralizing.<sup>76</sup> Without medical documentation, there is no accommodation.

The following Section introduces additional deficiencies in the reasonable accommodation process, identifying discrimination that exists even when an accommodation is granted.

### B. *Workplace Accommodation Discrimination*

I never sought them. And I never, ever would have. The invasion of privacy, the stigma, the fear of ableism—the general blowback that seeking accommodations would have brought—all of that would have been too high of a price to pay for the paltry accommodations my institution would have granted me.<sup>77</sup>

This Section draws on first-hand accounts of accommodation discrimination experienced by disabled academics and lawyers. These individuals are privileged either with respect to their economic status, social status, or both, but they too cannot escape accommodation discrimination.<sup>78</sup> Their experiences underscore the limits of self-advocacy in a broken system.

In *Life of the Mind Interrupted*, a collection of essays about her experience as a professor with mental illness, Katie Rose Guest Pryal describes how employees obtain reasonable accommodations in higher education, and the invasion of privacy and unpaid labor the

---

74. *Id.*

75. *Id.* at 68.

76. See Lin, *supra* note 18, at 1851–52, 1857, 1869 (describing the power imbalance created by an informal interactive process, through which an employee must negotiate access to a right an employer has wide discretion to withhold).

77. KATIE ROSE GUEST PRYAL, *LIFE OF THE MIND INTERRUPTED: ESSAYS ON MENTAL HEALTH AND DISABILITY IN HIGHER EDUCATION* 111 (2017).

78. Cf. Peter Blanck, Fitore Hyseni & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9, 53 (2021) (stating that lawyers, “relatively higher paid and educated professional workers” with “positions that offer relatively greater access to job security and economic power,” did not necessarily enjoy “enhanced access” to reasonable accommodations in the workplace).

process creates for them.<sup>79</sup> Pryal also details the stigma academics with disabilities experience, or endeavor to avoid.

Obtaining reasonable accommodations requires disabled employees to disclose personal information nondisabled employees can keep to themselves. According to Pryal and her interview subjects, this renders the reasonable accommodation process “too invasive and humiliating.”<sup>80</sup> Susan Ghiaciuc, a professor at James Madison University with multiple sclerosis, described how disclosing her condition to her employer was “stressful” and “intrusive.”<sup>81</sup> Ghiaciuc resented the invasion of privacy, feeling forced to put her condition on display “for public examination.”<sup>82</sup>

The disclosure of intimate details about a person’s disability, Pryal contends, renders the reasonable accommodation model dependent on invasions of privacy. Pryal’s desire to avoid disclosure, which would have placed her medical records “in the hands of a revolving door of strangers in human resources,” was reason enough to forego seeking accommodations.<sup>83</sup> Additionally, the process is “rife with mistrust.”<sup>84</sup> A person with disabilities must “interact with a gatekeeper,” “ask for something extra,” and “prove that [they] deserve[] accommodation in the first place—that [they are] ‘disabled enough.’”<sup>85</sup>

Disclosure requirements create problematic differences between disabled and nondisabled employees. Employees with disabilities who disclose personal disability information to their employers give their employers access to information that others can keep to themselves. It is difficult to draw a line between work life and private life when so much is known about one’s private life.

Pryal also identified the labor that employees with disabilities must take on to receive reasonable accommodations. When she reviewed her employer’s reasonable accommodation process, she encountered “a list of steps so burdensome that anyone who has any choice would opt not to file” for accommodations.<sup>86</sup> She also observed how the institutional decision to grant an accommodation does not necessarily result in effective change, as reasonable accommodations are “poorly

---

79. See PRYAL, *supra* note 77.

80. *Id.* at 55.

81. *Id.* at 53.

82. *Id.*

83. *Id.* at 54.

84. *Id.* at 49.

85. *Id.* at 103.

86. *Id.* at 49.

enforced.”<sup>87</sup> Disabled academics must themselves ask institutions to comply.<sup>88</sup> Though nondisabled colleagues may be compensated for additional duties that exceed their job description, people with disabilities are not paid for this kind of accommodations-related labor.

Pryal’s account is consistent with what Elizabeth Emens describes as “discrimination admin”: the “office-type work of . . . requesting legally mandated accommodations.”<sup>89</sup> Discrimination admin is one example of the disability admin people with disabilities must perform inside and outside of work to run their lives.<sup>90</sup> Discrimination admin for people with disabilities requires deciding “when, whether, and how to request accommodations of employers, schools, and public accommodations.”<sup>91</sup> Disabled employees pay for reasonable accommodations with their “time and mental labor.”<sup>92</sup>

Emens provides the following illustrative example of discrimination admin: an employee requests “an ergonomically designed lifting device for taking boxes off of shelves,” and the employer responds by “tell[ing] the employee to borrow that device, as needed, from another employee who also needs it.”<sup>93</sup> In this scenario, the employer has conceded that providing the device to the employee is reasonable. But still, to reap the benefits of the accommodation, the employee must “spend time and energy navigating that relationship with the coworker.”<sup>94</sup> The coworker may resent sharing the lifting device and disregard a coworker’s instructions.<sup>95</sup> The employee with disabilities who originally requested the accommodation must find time to

---

87. *Id.* at 46.

88. *Id.*

89. Emens, *supra* note 21, at 2349.

90. *Id.* Disability admin is one example of life admin: “the office-type work that it takes to run a life and a household.” *Id.* at 2331. Though everyone has life admin, people with disabilities have much more life admin than nondisabled people. *Id.* Disability admin requires management of medical admin, benefits admin, and discrimination admin, which “can come to feel overwhelming.” *Id.* at 2340–41.

91. *Id.* at 2351.

92. *Id.* at 2368.

93. *Id.*

94. *Id.*

95. *Cf.* Katherine Macfarlane, *Negotiating Masks in the Workplace: When the ADA Does and Does Not Apply*, PETRIE-FLOM CTR. HARV. L. SCH. (Mar. 8, 2002), <https://blog.petrieflom.law.harvard.edu/2022/03/08/masks-workplace-ada-reasonable-accommodation> [<https://perma.cc/88ZY-3TC7>] (describing the challenges faced by high-risk employees, including Justice Sonia Sotomayor, who must negotiate masking protocol one-on-one with their colleagues).

complete their typical workplace duties as well as this discrimination admin. Of course, discrimination admin is uncompensated work.<sup>96</sup>

As Emens' hypothetical suggests, reasonable accommodations can create friction in the workplace. In addition to discrimination admin, employees who receive accommodations become easy targets for harassment. In environments suffering from low morale and resource constraints, resentment focuses on people with disabilities.<sup>97</sup> Their accommodations are perceived as "special treatment" that others deserve too.<sup>98</sup>

Moreover, in certain workplaces, complaining about people with disabilities and their special treatment is commonplace. Academia is especially prone to discussions that stigmatize people with disabilities. A professor with an invisible psychiatric disability described her colleagues' complaints about accommodations provided to students with mental health issues, which are referred to as "special snowflake" accommodations.<sup>99</sup> The students' underlying conditions were characterized as "fake" and "a pretense for cheating."<sup>100</sup> The professor's colleagues also complained that student accommodations rendered life more difficult for faculty.<sup>101</sup>

When professors complain about disabled students and their reasonable accommodations, accusing their disabled students of fraud, their disabled colleagues understand that disability and disabled people are not welcome. Voicing these concerns in public also assumes that people with disabilities are not present, existing somewhere else as "them," not "us."

Othering people with disabilities discourages them from seeking reasonable accommodations. Pryal interviewed "Sherry," an associate professor with bipolar disorder who recently took on additional duties as an administrator.<sup>102</sup> Despite her eligibility for reasonable accommodations, and the concrete benefits they would provide, Sherry "would never consider filing for disability accommodations."<sup>103</sup>

---

96. Emens has also explained that when the law ignores disability admin, and the costs it imposes on a disabled employee, the reasonableness of an accommodation is assessed with incomplete data. Emens, *supra* note 21, at 2361.

97. PRYAL, *supra* note 77, at 67.

98. *Id.* at 70.

99. *Id.* at 13.

100. *Id.*

101. *Id.* at 14.

102. *Id.* at 51.

103. *Id.* at 52.

Seeking accommodations would force her to endure the stigma associated with them. Sherry decided that “the risks of seeking accommodations outweigh[ed] the benefits.”<sup>104</sup> Ellen Samuels has similarly noted that academics with disabilities “must constantly weigh our access needs against the very real risk of being perceived as demanding and expensive troublemakers in a professional landscape shaped by expectations of gracious collegiality.”<sup>105</sup>

Carrie Griffin Basas’ study of female law school graduates with disabilities further illustrates how the fear of stigma disincentivizes people with disabilities from seeking reasonable accommodations. She discovered that “the pressures to pass and to cover are intensely felt and tangible.”<sup>106</sup> “Although equipped with the acumen to assert their ADA rights,” Griffin Basas noticed that the women “adapt[ed] to the workplace, rather than expecting or waiting for it to conform to their needs.”<sup>107</sup> They adapted by engaging in “self-accommodation,” that is, “provid[ing] their own reasonable accommodations” instead of asking their employers to do so.<sup>108</sup>

Self-accommodations are poor replacements for reasonable accommodations. First, they redistribute the cost of accommodations to disabled people, even though the ADA places the burden of rendering workplaces accessible on employers. Second, when attorneys self-accommodate, they do so by, for example, purchasing their own equipment or making changes to their physical space without any help. As a result, self-accommodation assigns additional uncompensated work and costs to employees with disabilities.

---

104. *Id.*

105. Stephanie L. Kerschbaum, Rosemarie Garland-Thomson, Sushil K. Oswal, Amy Vidali, Susan Ghiaciuc & Margaret Price, *Faculty Members, Accommodation, and Access in Higher Education*, MLA PRO. (Dec. 9, 2013), <https://profession.mla.org/faculty-members-accommodation-and-access-in-higher-education> [<https://perma.cc/M85H-K63F>].

106. Griffin Basas, *supra* note 22, at 56. Echoing Katie Eyer’s and Jasmine Harris’s disability disclosure work, Griffin Basas concludes that the problem facing people with disabilities who are afraid to disclose “is self-perpetuating.” *Id.* “[C]ultures of shame and fear around disability cause fewer people to identify with the label, and therefore, opportunities are missed to make disability commonplace, familiar, and comfortable to nondisabled people.” *Id.* at 56–57. However, though one woman’s disclosure “can have a tremendous effect on attitudes in the workforce,” “the daily struggle of managing other people’s reactions to and stereotypes about disability can become a job in itself.” *Id.* at 57. That is, even disclosure can create disability admin.

107. *Id.* at 39.

108. *Id.*

However, despite the financial and physical toll of self-accommodation, it avoids disclosing disability and the stigma that accompanies disclosure.

The women in Griffin Basas' study who did obtain accommodations either attempted to hide them or experienced discrimination once the accommodations became public. One woman explained that she chose to hide her disability and accommodations because she "did not want to hear debates about whether or not [the accommodations] gave [her] an advantage."<sup>109</sup> A law professor who received an accommodation permitting her to teach in the classroom nearest her office reported that her faculty colleagues were "irritated" by what they resentfully described as her "reserved" space.<sup>110</sup>

Some women interviewed by Griffin Basas neither sought accommodations nor self-accommodated, choosing instead to struggle with the obstacles reasonable accommodation would have removed "rather than 'out' themselves as having disabilities."<sup>111</sup> This particular choice has physical consequences. For example, an employee who cannot walk long distances but does not request an accommodation related to her mobility impairment may be working in pain.

Nicole Porter's article *Special Treatment Stigma After the ADA Amendments Act* emphasizes the hostility accommodated employees experience when coworkers learn of their accommodations.<sup>112</sup> Porter identifies two ways in which special treatment stigma manifests itself. First, it causes employers to be less likely to hire people with disabilities because they believe that disabled people will be more expensive and burdensome than other nondisabled employees.<sup>113</sup> Even if a disabled person is hired, an employer's fear "of angering other employees or harming employee morale" may render them less willing to grant a reasonable accommodation request.<sup>114</sup> Even when accommodations do not burden other employees, employers worry about facing a

---

109. *Id.* at 72.

110. *Id.* at 78. As a law school student, I was once told by a classmate that I was "lucky" to have a disabled parking placard. After receiving that comment, I never again parked in the parking spaces reserved for disabled people, no matter how much pain I was in.

111. *Id.*

112. Porter, *supra* note 23, at 264.

113. *Id.* at 234.

114. *Id.* at 234–36.

backlash as a result of providing accommodations that may look like special favors.<sup>115</sup>

Second, and most relevant to accommodation discrimination, special treatment stigma causes coworkers to believe that they must work more on account of a disabled employee's reasonable accommodation, which itself is perceived as unfair or undeserved.<sup>116</sup> Porter describes a case in which a plaintiff diagnosed with Type II diabetes was accommodated with regular breaks "to eat and manage her condition properly."<sup>117</sup> As a result of her accommodation, she endured "derogatory comments and complaints from coworkers who contended that they were required to do more."<sup>118</sup> Yet despite the prevalence of special treatment stigma, Porter explains that "[t]he most common types of accommodations, such as making the building more accessible or providing modifications to work equipment, do not negatively affect other employees."<sup>119</sup>

As explained in this Section, accommodation discrimination falls into three categories. First, reasonable accommodations require disclosure of personal, medical information that employees with disabilities would prefer to remain private. Disabled employees who receive reasonable accommodations must open up their private lives to workplace scrutiny, differentiating their experience at work from that of their nondisabled colleagues. Second, employees with disabilities cannot rely on their employers to implement reasonable accommodations, even if requests for reasonable accommodations are granted. As Elizabeth Emens has described, disability admin requires employees with disabilities to ensure the cooperation of their coworkers in the reasonable accommodation process.<sup>120</sup> Third, employees with disabilities experience "special treatment stigma," which "keep[s] many qualified, talented [employees]," like the women

---

115. *Id.* at 249.

116. *Id.* at 234–35. Accommodations that affect unaccommodated employees include "job restructuring, providing part-time or modified work schedules, allowing leaves of absence, and reassigning individuals with disabilities to vacant positions." *Id.* at 237.

117. *Id.* at 241–42 (citing *Petrosky v. N.Y. State Dep't of Motor Vehicles*, 72 F. Supp. 2d 39 (N.D.N.Y. 1999)).

118. *Id.*

119. *Id.* at 238 (stating that "[w]hile some accommodations place some burdens on coworkers to take on some additional tasks, those tasks are usually 'marginal' tasks and do not place any unreasonable burdens on other employees").

120. Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 908 (2008).

in Griffin Basas' study, "from working in meaningful, appropriately compensated jobs."<sup>121</sup>

Stigma harms and isolates people with disabilities. Doron Dorfman has described how stigmatized people with disabilities "are more concerned with their social standing in society and tend to be more self-conscious, perceiving themselves as under scrutiny."<sup>122</sup> When people with disabilities fear "being regarded as fakers or abusers," they withdraw, an effect that "works counter" to the ADA's goal of "allow[ing] people with disabilities to be part of the public sphere and not to have them hidden away."<sup>123</sup>

### III. REASONABLE ACCOMMODATIONS IN HIGHER EDUCATION

In theory, students with disabilities in higher education have been protected by federal law since 1973, when the Rehabilitation Act<sup>124</sup> was enacted to prohibit disability discrimination by all recipients of federal funding.<sup>125</sup> But progress has been slow. Though reasonable accommodations are available to students with disabilities in higher education, obtaining a reasonable accommodation does not free a disabled student of the discrimination the reasonable accommodation process creates.

All students experience stress during periods of transition when they enter a new college or university. Yet students with disabilities who need reasonable accommodations experience additional stress that renders their educational experience vastly different than that of their nondisabled peers. Like disabled employees, disabled students must provide extensive medical documentation of disability. Students' socioeconomic status may limit their access to necessary diagnoses and records. When they apply for accommodations, they may have just arrived on a new campus in a new town where family can no longer provide the accommodation-like support available at home.

Students also must engage in disability admin, serving as messengers for disability services offices. There is no guarantee that the accommodations a disability services office grants will be implemented without additional self-advocacy.

---

121. Griffin Basas, *supra* note 22, at 102.

122. Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 L. & SOC'Y REV. 1051, 1079 (2019).

123. *Id.* at 1082.

124. 29 U.S.C. § 794.

125. *Id.*

Finally, students with disabilities experience accommodations-related stigma from both professors and fellow students, who express their disapproval of disability and reasonable accommodations publicly.

Accommodation discrimination shapes a disabled student's educational experience. It requires them to engage in demoralizing work their nondisabled classmates avoid and no one else sees.

#### A. *The Academic Accommodations Ideal*

The ADA and the Rehabilitation Act of 1973 guarantee higher education accommodations for disabled students. The ADA reaches state colleges and universities through Title II, which governs public entities' services, programs, and activities.<sup>126</sup> Title II prohibits the exclusion of disabled students from "educational programs or activities" on account of their disabilities.<sup>127</sup> Title II uses the term "reasonable modification" as opposed to "reasonable accommodation," but modifications, like accommodations, facilitate access and participation.<sup>128</sup> Reasonable modifications must be made unless they would "fundamentally alter" the program at issue, "or would result in an 'undue burden.'"<sup>129</sup>

Only "qualified" students with disabilities are entitled to modifications, that is, those who with or without accommodation "meet[] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided."<sup>130</sup> For example, in the context of college admissions, a qualified student is one who meets admission criteria.<sup>131</sup>

Private colleges and universities are places of public accommodation bound by Title III of the ADA.<sup>132</sup> Similar to public colleges and

---

126. 42 U.S.C. § 12132.

127. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 488 (4th Cir. 2005).

128. *Id.*; see also § 12132 (stating that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity").

129. Nina Golden, *Access This: Why Institutions of Higher Education Must Provide Access to the Internet to Students with Disabilities*, 10 VAND. J. ENT. & TECH. L. 363, 368 (2008) (quoting § 12182(b)(2)(A)(ii)–(iii)).

130. § 12131(2).

131. Laura F. Rothstein, *Higher Education and the Future of Disability Policy*, 52 ALA. L. REV. 241, 247 (2000).

132. 42 U.S.C. § 12181(7)(J); Golden, *supra* note 129, at 367–68.

universities, private institutions cannot engage in disability-based discrimination and “must ensure that [disabled] students enjoy the same goods, services, facilities, privileges, advantages, or accommodations as students without disabilities.”<sup>133</sup> They also must make reasonable modifications unless the modifications would “‘fundamentally alter’ the nature of the goods, services, facilities or other benefits offered or would result in an ‘undue burden.’”<sup>134</sup>

Religious institutions of higher education are not covered by Title III of the ADA.<sup>135</sup> However, Section 504 of the Rehabilitation Act reaches all colleges and universities that receive federal funding, including religious institutions.<sup>136</sup> Entities subject to Section 504 must make academic adjustments, that is, modifications to academic requirements “necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of [disability], against a qualified [disabled] applicant or student.”<sup>137</sup> Like the ADA, Section 504 does not require altering “the basic, essential requirements of [a school’s] programs, such as minimum GPA and attendance requirements.”<sup>138</sup>

In theory, to obtain reasonable accommodations, students need only identify themselves and their disability; request specific accommodations; and submit documentation of their disability.<sup>139</sup> Requests for reasonable accommodations should be assessed on a case-by-case basis through which schools consider students’ submissions to determine if accommodations are required.<sup>140</sup>

The reasonable accommodations colleges and universities provide to students with disabilities may include “a reduced course load, extra time on examinations,” or auxiliary aids and services like sign language

---

133. Golden, *supra* note 129, at 368.

134. *Id.* (quoting § 12182(b)(2)(A)(ii)–(iii)). “Title III does not include a ‘qualified’ requirement . . .” *Id.* at 373.

135. Mark C. Weber, *Disability Discrimination by State and Local Government: The Relationship Between Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act*, 36 WM. & MARY L. REV. 1089, 1110 (1995).

136. *See, e.g., Nat’l Ass’n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49, 55 (D. Mass. 2019).

137. 34 C.F.R. § 104.44(a).

138. Lynn Daggett, *Doing the Right Thing: Disability Discrimination and Readmission of Academically Dismissed Law Students*, 32 J. C. & U. L. 505, 516–17 (2006).

139. DelPo Kulow & Missirian, *supra* note 50, at 168.

140. Suzanne E. Rowe, *Learning Disabilities and the Americans with Disabilities Act: The Conundrum of Dyslexia and Time*, 15 J. LEGAL WRITING INST. 165, 172 (2009).

interpreters, note-takers, or voice recognition software.<sup>141</sup> Accommodations should support the integration of students with disabilities rather than separate and stigmatize them.<sup>142</sup>

Most institutions of higher education receive federal funding and are subject to Section 504.<sup>143</sup> As a result, colleges and universities have been required to accommodate students with disabilities since 1973, not 1990.<sup>144</sup> Yet at first, Section 504 had a negligible impact on higher education.<sup>145</sup> Several years would pass before a generation of students who had benefited from improved access in primary and secondary schools enrolled in college.<sup>146</sup> The Individuals with Disabilities Education Act (“IDEA”)<sup>147</sup> was passed in 1975, two years after the Rehabilitation Act, “to ensure that all children with disabilities received free appropriate public education and related services with assurance of procedural safeguards.”<sup>148</sup>

Federal law has ensured students with disabilities’ presence on campus. The following Section describes how accommodation discrimination shapes their educational experiences.

### B. Higher Education Accommodation Discrimination

I personally receive extended time for exams as one of my accommodations, and I’ve had some faculty who’ve said things like, do you really need that? Or, maybe you’ll get a higher score because you have more time. I’ve had people who’ve said things like, are you trying to ‘game the system’?<sup>149</sup>

---

141. Golden, *supra* note 129, at 406 (citing 34 C.F.R. §§ 35.104, 104.44(d) (2006)). However, institutions of higher education “need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.” Laura Rothstein, *Forty Years of Disability Policy in Legal Education and the Legal Profession: What Has Changed and What Are the New Issues?*, 22 AM. U.J. GENDER, SOC. POL’Y & L. 519, 559 (2014).

142. Rothstein, *supra* note 131, at 248 (comparing disability law’s integration principle to the reasoning in *Brown v. Board of Education*, 347 U.S. 483 (1954), which emphasized the stigmatic impact of segregation).

143. *Id.* at 241.

144. *Id.*

145. *Id.* at 242.

146. *Id.* at 243.

147. 20 U.S.C. § 1400.

148. Rothstein, *supra* note 131, at 243.

149. Rachel Whalen, *Overlooked and Unaddressed: Students Recount Fighting Ableism on Campus*, CORNELL DAILY SUN (Nov. 30, 2016), <https://cornellsun.com/2016/11/30/overlooked-and-unaddressed-students-recount-fighting-ableism-on-campus> [https://per

In his book *Academic Ableism*, Jay Timothy Dolmage describes institutes of higher education as ableist spaces where accommodations-related guidance is difficult to find,<sup>150</sup> and universities' reasonable accommodation processes adhere to the medical model of disability, requiring students to "catalogue their deficits."<sup>151</sup> Like employers, schools also require extensive medical documentation of disability, giving health care providers control over students' "disability personhood."<sup>152</sup>

Some schools reject medical documentation of learning disabilities if the most recent evaluation establishing the disability is more than three years old.<sup>153</sup> Each new learning disability evaluation can cost between \$500 and \$2,500,<sup>154</sup> which, depending on students' socioeconomic background, may be cost-prohibitive. Ashley Yull has argued that conditioning accommodations for certain disabilities on access to a psychiatric diagnosis has a disproportionate impact on minority students.<sup>155</sup> In the context of autism, for example, minority students are less likely to have access to the systems that would help identify autism and the providers that would diagnose it.<sup>156</sup>

Permitting students to submit past documentation of disability or IEPs does not resolve the disparate impact. Access to past diagnoses can also be a function of socioeconomic status. Moreover, as Laura Rothstein has explained, "[t]he fact that an accommodation was not provided in the past does not mean that it will not be reasonable in

---

ma.cc/U7TV-LANP] (quoting Jonathan Goldstein, "three-year president of Cornell Union for Disability Awareness").

150. DOLMAGE, *supra* note 67, at 22.

151. *Id.* at 61.

152. Tara Roslin, Note, *Vitriolic Verification: Accommodations, Overbroad Medical Record Requests, and Procedural Ableism in Higher Education*, 47 AM. J.L. & MED. 109, 110 (2021).

153. See, e.g., *Registering with the Office of Student Disability Services*, CUNY LEHMAN COLL. STUDENT DISABILITY SERVS., <https://www.lehman.edu/student-disability-services/reasonable-accommodations.php> [<https://perma.cc/6SS2-796K>] (stating that learning disability evaluations "should have taken place within the last three years of high school").

154. *The Adult Learning Disability Assessment Process*, LEARNING DISABILITIES ASS'N AM., <https://1daamerica.org/info/adult-learning-disability-assessment-process> [<https://perma.cc/XC5V-GMU3>]. The related issue of who may diagnose and provide medical proof of disabilities is addressed in *Guckenberger v. Boston University*, 974 F. Supp. 106, 140 (D. Mass. 1997).

155. Ashley Yull, *The Impact of Race and Socioeconomic Status on Access to Accommodations in Post-Secondary Education*, 23 AM. U. J. GENDER, SOC. POL'Y & L. 353, 385 (2015).

156. *Id.*

another setting.”<sup>157</sup> Fixing disability in childhood would prejudice students who encounter new technology that gives rise to a need for new reasonable accommodations, or those “whose disabilities are identified later in life.”<sup>158</sup>

If sufficient medical documentation is submitted, students must still fight for a limited range of “institutionally sanctioned” reasonable accommodations.<sup>159</sup> At some schools, accommodations granted one academic year will not automatically be in place the following year unless the student completes additional disability admin.<sup>160</sup> As Dolmage has explained, accommodations “must be asked for, over and over again, by students who are forced to hold their hand out for something that we cannot even prove helps them.”<sup>161</sup>

Colleges and universities may require students with disabilities to communicate their accommodation needs directly to their professors by delivering “accommodation letters.”<sup>162</sup> An accommodation letter may be administratively convenient, allowing schools to use one familiar form to communicate directly with professors. However, the arrangement can create unnecessary disclosure. Even if an accommodation letter does not identify a student’s specific medical diagnosis, it communicates the existence of disability by virtue of the need for accommodation. And the nature of the accommodation provided may reveal the disability at issue.

Here, a disabled perspective is key. A student concerned with the consequences of disclosure may prefer to keep all aspects of their disability confidential, from the nature of their underlying medical diagnosis to the nature of their accommodations. In many instances, professors do not need to know which student receives a particular accommodation. For example, if an accommodation guarantees a student audio recordings of class lectures, a professor only needs to

---

157. Rothstein, *supra* note 131, at 568.

158. *Id.*

159. DOLMAGE, *supra* note 67, at 20, 61.

160. See, e.g., *Renewing Accommodations*, ITHACA COLL., <https://www.ithaca.edu/student-accessibility-services/how-get-accommodations-ic/renewing-accommodations> [https://perma.cc/7887-YKRN] (stating that “[a]ccommodation plans must be renewed every semester for each class the student chooses to renew in”).

161. DOLMAGE, *supra* note 67, at 91.

162. See, e.g., *Accommodations & Services: Disability Access & Inclusion Student Services (DAISS)*, UNIV. AT ALBANY—STATE UNIV. OF N.Y., <https://www.albany.edu/disability/accommodations-services> [https://perma.cc/9PHG-YMNH] (stating that “[s]tudents with approved academic accommodations are responsible for sharing their accommodation letter with their professors at the start of each semester”).

know that their class is being recorded—but not for whom it is being recorded. Professors are generally responsible for recording classes or delivering the recording to accommodated students. They do not need to be read into an accommodation letter unnecessarily.

To the extent an accommodation requires a professor to interact directly with a student, disclosure cannot be avoided. But disclosure need not be the default.

Requiring students to convey their reasonable accommodations to their professors also imposes disability admin on accommodated students. To the extent professors disagree with the accommodations students are granted, students may be forced to negotiate. Dolmage explains that during these exchanges, students are vulnerable to “huge power imbalance[s]” that may jeopardize their ability to either ask or push for the accommodations they need.<sup>163</sup>

Reasonable accommodations that are granted may not be implemented or may prove ineffective. Yet students are discouraged from voicing their concerns. Instead, once accommodations are granted, students are expected to be gracious and thankful, “to praise good professors and administrators and never complain.”<sup>164</sup> With no quality control in place, universities commonly suggest and grant requests for additional testing time, even though “there is little research showing the efficacy” of this particular accommodation.<sup>165</sup>

Dolmage likens the accommodation process to war.<sup>166</sup> Professors rip up accommodation letters while others cite academic freedom as reason to refuse to implement accommodations.<sup>167</sup> On some campuses, “it feels like ‘a luxury’ when professors and staff actually work with” disabled students.<sup>168</sup>

---

163. DOLMAGE, *supra* note 67, at 74.

164. *Id.* at 81.

165. *Id.* at 75; *see also* Rothstein, *supra* note 131, at 257 (explaining that the reasonable accommodations requests most likely to be granted are those requesting additional exam time, as “[i]nstitutions are often unable to meet the burden of establishing that they are testing ‘speed’”). Of course, extra time may be exactly what a student with disabilities needs. But one wonders if the ease of administering tests on a fixed schedule explains why this accommodation is so rarely denied.

166. DOLMAGE, *supra* note 67, at 90.

167. *Id.*

168. Allie Grasgreen, *Dropping the Ball on Disabilities*, INSIDE HIGHER ED (Apr. 1, 2014), <https://www.insidehighered.com/news/2014/04/02/students-disabilities-frustrated-ignorance-and-lack-services> [<https://perma.cc/7FGT-VCTA>]; *see also* Hannah Knowles & Courtney Douglas, *You Can Never Level the Playing Field*, STAN. DAILY

Students with disabilities who receive reasonable accommodations must also contend with classmates who “hold stigmas about people with disabilities,” or believe that reasonable accommodations give students with disabilities “an unfair advantage.”<sup>169</sup> Students often whisper amongst themselves about the purported advantages students with disabilities are receiving, but occasionally they say the quiet part out loud. In 2018, a law student at the University of Michigan emailed a public listserv to complain about students who received testing accommodations.<sup>170</sup> The email subject read “People using ‘extra’ time,” and in the email’s body, the student wrote: “I see you messing up the curve for me thanks.”<sup>171</sup>

Nicole Porter has explored the impact of this kind of social disapproval.<sup>172</sup> Students with disabilities “worry about standing out as different and perceive that their peers and professors either doubt their ability to perform academically or believe that they are receiving an unfair advantage if they receive academic accommodations.”<sup>173</sup> Although details regarding a student’s disability should remain confidential, “faculty members sometimes coerce students into revealing that information, which sends a message to the students that the faculty member is doubting the disability or the need for a particular accommodation.”<sup>174</sup>

Like students, faculty voice their complaints about reasonable accommodations publicly. In 2017, Mount Holyoke Professor Gail Hornstein published “Why I Dread the Accommodations Talk” in *The*

---

MAG. (May 17, 2019), <https://stanforddaily.com/2019/05/17/you-can-never-level-the-playing-field> [<https://perma.cc/3N2V-QA2R>] (stating that “a professor’s resistance to an accommodation—even if they’re ultimately willing to budge—can effectively prevent a student from getting what they need”).

169. DOLMAGE, *supra* note 67, at 24.

170. See Katherine Macfarlane, *Testing Accommodations Are Not a Gift of Extra Time*, Ms. JD (Jan. 10, 2019), <https://ms-jd.org/blog/article/testing-accommodations-are-not-a-gift-of-extra-time> [<https://perma.cc/577X-272M>].

171. *Id.*

172. Nicole Buonocore Porter, *Special Treatment Stigma in Higher Education*, REGULATORY REV. (Oct. 27, 2021), <https://www.theregreview.org/2021/10/27/buonocore-porter-special-treatment-stigma-in-higher-education> [<https://perma.cc/396K-EQL2>].

173. *Id.*

174. *Id.*

*Chronicle of Higher Education*.<sup>175</sup> Hornstein opened the essay with a hypothetical example of the dreaded talk in question:

The student, let's call her "Lee," arrived at my office at the appointed time, took the chair I indicated, pulled a form from her backpack, and shot me a look. Not confrontational, but not exactly friendly, either—a demeanor underscored by the old black motorcycle jacket and punk haircut she sported.<sup>176</sup> She was in a large lecture course I was teaching, and had asked to see me in this first week of term. As soon as I glimpsed the form, I knew she was here to tell me which accommodations the accessibility office had deemed her eligible to receive.<sup>177</sup>

Hornstein dreads encounters like this one because "they have become formulaic and often defensive—distant from the actual needs and talents of the student thrusting the form" at her.<sup>178</sup>

During this hypothetical encounter, the student discloses that she suffers from panic attacks.<sup>179</sup> Next, the student asks what will happen if she "get[s] an attack on the day of one of the tests" as Hornstein announced in class that she doesn't permit make-up exams.<sup>180</sup> In the hypothetical scenario, Hornstein next sets the student's accommodation letter aside, and asks the student about her typical coping mechanisms.<sup>181</sup> Following this encounter, the student "didn't miss any deadlines and got a high grade" in the course.<sup>182</sup>

But the disabled student's experience might still have been negative. The student might have experienced panic attacks during testing despite her high grades. The goal of accommodation is not high grades, it is equality, which for this student, meant taking tests free of panic attacks. Moreover, obtaining an accommodation letter requires disability admin that Hornstein's retelling overlooks and erases.<sup>183</sup>

---

175. Gail A. Hornstein, *Why I Dread the Accommodations Talk*, CHRONICLE OF HIGHER EDUC. (Mar. 26, 2017), <https://www.chronicle.com/article/why-i-dread-the-accommodations-talk> [<https://perma.cc/3MN3-HQQQ>].

176. The only thing missing from this parable is a cigarette, or maybe a copy of *On the Road*.

177. Hornstein, *supra* note 175.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Accommodation letters at Mount Holyoke "are issued by AccessAbility Services, granting students accommodations specifically tailored to their needs

Hornstein's essay also emphasized her distrust of student accommodation letters. Hornstein explained that faculty "aren't helping students who already have problems to succeed in their lives after college by treating them in a standardized manner or by overprotecting them."<sup>184</sup> Rather, faculty should "[d]etermin[e] who actually requires assistance, and in what form, and discourage[e] students from defining themselves by what they *can't* do."<sup>185</sup> Yet in an inaccessible society, disability is experienced through obstacles. Reasonable accommodations, when effective, remove them.

One Mount Holyoke student explained that Hornstein's account of "asking the student what she does to calm down 'perpetuates this false narrative that there's a coping mechanism out there that will 'cure' whatever ails you."<sup>186</sup> The question itself is condescending: "students with accommodations probably have tried those mechanisms before and are tired of hearing others' input."<sup>187</sup>

Another student with IBS countered Hornstein's description of the Mount Holyoke reasonable accommodation process as one that is overprotective of students.<sup>188</sup> The process in fact demands a great deal of self-advocacy. To receive accommodations, a student "ha[s] to register with the AccessAbility Services office, present a letter from her doctor, meet with them, determine what specific needs she had and ask each of her professors to sign the letter granting her permission to fulfill those needs."<sup>189</sup> The same student received an accommodation letter granting her permission to leave class as needed without suffering attendance penalties,<sup>190</sup> yet one of her professors refused to sign it.<sup>191</sup>

---

based on the nature of their disability, and must be signed by a student's professor if they wish to use their accommodations in the course." Allyson Huntoon, *Students Respond to Professor's Accommodations Article*, MOUNT HOLYOKE NEWS (Apr. 27, 2017), <http://www.mountholyokenews.com/news/2017/4/27/students-respond-to-professors-accommodations-article> [<https://perma.cc/Q88L-WCRX>].

184. Hornstein, *supra* note 175.

185. *Id.*

186. Huntoon, *supra* note 183.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* Hornstein told the paper that "[o]f course, I and every other faculty member are going to provide whatever is in the letter." *Id.* Professor Hornstein happened to write down what many others think. After all, *The Chronicle of Higher*

Accommodation discrimination is not always this overt. It may also result from policies that are facially neutral, like classroom laptop bans. Professors who ban laptops argue that student learning is improved when students are actively listening and taking notes by hand.<sup>192</sup> Ruth Colker has offered a powerful critique of laptop bans.<sup>193</sup> She explains that computer use in the classroom raises two distinct concerns, often conflated: first, whether computer users who access the internet take less effective notes than those who use computers without accessing the internet, and second, whether “computer users, who are not able to access the Internet, are able to learn as effectively as students who are not using computers in the classroom.”<sup>194</sup> As to the first point, Colker assumes that computer users on the internet are more distracted than computers users who are not.<sup>195</sup>

---

*Education* presumably edited the essay and approved of its content, which it published as “Advice.” Hornstein, *supra* note 175.

192. See, e.g., Dan Rockmore, *The Case for Banning Laptops in the Classroom*, NEW YORKER (June 6, 2014), <https://www.newyorker.com/tech/annals-of-technology/the-case-for-banning-laptops-in-the-classroom> [<https://perma.cc/B82B-LD7V>] (stating that “[t]he act of typing effectively turns the note-taker into a transcription zombie, while the imperfect recordings of the pencil-pusher reflect and excite a process of integration, creating more textured and effective modes of recall”); Tal Gross, *This Year, I Resolve to Ban Laptops from My Classroom*, WASH. POST (Dec. 30, 2014, 6:00 AM), <https://www.washingtonpost.com/posteverything/wp/2014/12/30/this-year-im-resolving-to-ban-laptops-from-my-classroom> [<https://perma.cc/2NDB-UQFB>]; Stuart Green, *I’m Banning Laptops from My Classroom*, WALL ST. J. (June 10, 2016, 4:57 PM), <https://www.wsj.com/articles/im-banning-laptops-from-my-classroom-1468184264> [<https://perma.cc/3QXL-WT4T>]; Darren Rosenblum, *Leave Your Laptops at the Door to my Classroom*, N.Y. TIMES (Jan. 2, 2017), <https://www.nytimes.com/2017/01/02/opinion/leave-your-laptops-at-the-door-to-my-classroom.html> [<https://perma.cc/75CL-8A2N>].

193. See Ruth Colker, *Universal Design: Stop Banning Laptops!*, 39 CARDOZO L. REV. 483 (2017). “The most informative studies on the issue of computer use, without an Internet connection, were conducted by Pam Mueller and Daniel Oppenheimer.” *Id.* at 486 (citing Pam A. Mueller & Daniel M. Oppenheimer, *The Pen is Mightier than the Keyboard: Advantages of Longhand over Laptop Note Taking*, 25 PSYCH. SCI. 1159 (2014)). The studies conducted by Mueller and Oppenheimer involve “three artificial experiments where students are assigned their note-taking style—longhand or computer—and in which students have little incentive to learn the material from the lecture.” *Id.* at 487. Unlike most classroom experiences, the students in the studies were paid “irrespective of how well they do on the exercise,” and the material they took notes on “is not assigned in any course at a university” and “conveyed entirely through a brief TED Talk or lecture.” *Id.*

194. *Id.* at 485.

195. *Id.*

With respect to the second issue, however, “[i]t is possible that some students learn more effectively when they have access to a computer in the classroom to take notes and review their own notes,”<sup>196</sup> including students with disabilities such as dyslexia.<sup>197</sup> Other students with disabilities may find that taking notes by hand is preferable.<sup>198</sup>

At this point, laptop ban proponents promise that they will allow students with disabilities to be exempted from the ban because they will allow laptop use as a reasonable accommodation.<sup>199</sup> But permitting accommodation-based exceptions to laptop bans still perpetuates inequality. First, it forces the accommodated student to disclose their disabled status. If an accommodated student uses a laptop, disclosure of disability is inevitable because “[t]heir classmates will see them using a laptop” despite the ban.<sup>200</sup> The University of Washington School of Law does not permit laptop bans even with accommodation-based exceptions, because “the very visible accommodation that would have to be made for a select number of students with disabilities[] would be tantamount to our disclosing to our disabled students’ classmates a disability that they might not wish to be made public.”<sup>201</sup> Laptop bans also invite special treatment stigma.<sup>202</sup>

Obtaining an accommodation-based laptop ban exception requires disability admin, from collecting medical documentation to completing a university’s formal reasonable accommodation

---

196. *Id.* at 486.

197. *Id.* at 487. Students who cannot grip a pen or pencil also may prefer to use laptops.

198. *Id.* at 492.

199. This is not benevolence—the law requires reasonable accommodations.

200. Colker, *supra* note 193, at 490.

201. *Laptop Computer in Classroom Policy*, UNIV. WASH. SCH. L., <https://www.law.washington.edu/students/academics/laptoppolicy.aspx> [<https://perma.cc/ZEM6-VEU9>].

202. Paul Harpur & Michael Ashley Stein, *Universities as Disability Rights Change Agents*, 10 NE. U. L. REV. 542, 557 (2018). Some professors have attempted to circumvent the reasonable accommodation process by inviting students who need accommodation-based exceptions to request them directly from the professor. However, this workaround still forces students to unnecessarily disclose disability. It also raises additional fairness questions. How much information will a student be required to divulge? What training do individual professors receive to evaluate whether a student’s disability justifies an accommodation? If a professor denies a student’s request, can the denial be appealed? An accommodation process controlled by individual professors may save time, but it does not necessarily render a policy that requires accommodation any fairer.

process.<sup>203</sup> The disability admin may prove futile. As Katie Guest Pryal has observed, even if students ultimately receive permission to use laptops, the permission often comes too late to matter.<sup>204</sup>

If the student doesn't have the medical documentation required to get university-level accommodations, then the task can be next to impossible to complete before the end of the semester: the academic testing alone takes time (weeks to months) and exorbitant amounts of money (often thousands of dollars). By the time the student can get formal accommodations, the semester is over.<sup>205</sup>

Sending students with disabilities down the reasonable accommodation rabbit hole to obtain permission to use laptops in class, while their classmates complete their reading and prepare for class, is a stark example of differential treatment. Laptop bans perpetuate accommodation discrimination.

As described in this Section, accommodation discrimination impacts students with disabilities in three fundamental ways, differentiating their educational experiences from those of their nondisabled peers. First, to obtain reasonable accommodations, which ensure equal opportunity, they must obtain medical documentation, if they can afford it. Second, even if their accommodations are granted, they must engage in what Elizabeth Emens refers to as disability admin, renewing accommodations every semester and communicating reasonable accommodations to their professors on behalf of the university. The third type of discrimination experienced by students with disabilities is special treatment stigma. Faculty and students alike treat students with disabilities as fakers. Accommodation discrimination is a heavy burden.

#### IV. THE MISSING LAW OF ACCOMMODATION DISCRIMINATION

This Part explores three theories of disability discrimination that might be relied upon to challenge the accommodation discrimination described in this Article. First, it considers whether the invasion of privacy that accompanies reasonable accommodation requests is actionable as improper disclosure of confidential disability

---

203. *Id.*

204. Katie Guest Pryal, *When You Talk About Banning Laptops, You Throw Disabled Students Under the Bus*, HUFFINGTON POST (Nov. 27, 2017, 10:38 PM), [https://www.huffpost.com/entry/when-you-talk-about-banning-laptops-you-throw-disabled\\_b\\_5a1ccb4ee4b07bcab2c6997d](https://www.huffpost.com/entry/when-you-talk-about-banning-laptops-you-throw-disabled_b_5a1ccb4ee4b07bcab2c6997d) [<https://perma.cc/H95A-DJ39>].

205. *Id.*

discrimination. Second, it examines whether the social stigma experienced by people with disabilities gives rise to cognizable hostile work environment or hostile educational environment claims. Third, it explores reshaping failure to accommodate claims to capture instances in which employers or schools grant but unreasonably fail to implement reasonable accommodations.

A. *Disclosure of Confidential Disability Information*

As described above, the medical disclosures required to obtain accommodations can feel like a privacy violation.<sup>206</sup> In *Disability Without Documentation*, I argued against medical documentation requirements because they are legally unjustifiable and entrench the medical model of disability.<sup>207</sup> Until that error is corrected, medical documentation requirements do not violate disability law. Similar justifications excuse higher education's extensive medical documentation requirements. Disclosure of extensive, personal medical information is, unfortunately, an accommodations prerequisite.<sup>208</sup>

The ADA provides some protection for employees' disability-related records. Information regarding an employee's medical condition or history must be "collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record."<sup>209</sup> However, the ADA grants access to "supervisors and managers" when they must be informed of "necessary restrictions on the work or duties of the [disabled] employee and necessary accommodations."<sup>210</sup> "[F]irst aid and safety personnel" may also obtain access to the information if an employee's disability "might require emergency treatment."<sup>211</sup> Very few cases interpret these provisions, and when they do, the disclosure claims are brought against former employers who disclose disability information to third parties.<sup>212</sup> At issue here is the disclosure to current coworkers.

---

206. See *supra* notes 98–106 and accompanying text.

207. Macfarlane, *supra* note 4, at 63.

208. Macfarlane, *supra* note 4, at 61.

209. 42 U.S.C. § 12112(d)(3)(B); 29 C.F.R. § 1630.14.

210. 42 U.S.C. § 12112(d)(3)(B)(i).

211. § 12112(d)(3)(B)(ii).

212. See, e.g., *McPherson v. O'Reilly Auto., Inc.*, 491 F.3d 726, 732 (8th Cir. 2007) (affirming grant of summary judgement for the employer because evidence of employer's phone conversation with a vocational counselor was insufficient to support the inference that the employer had disclosed privileged medical information).

In my own experience as a person with disabilities who has received workplace accommodations, it is impossible to know where disability and reasonable accommodation information is stored. However, I observed that ad hoc measures created to process requests for work-from-home accommodations during the COVID-19 pandemic appeared to abandon requirements about where and how confidential disability information must be stored. Confidential information was solicited over email and shared with individuals other than the supervisors and managers identified by the ADA.

Institutes of higher education also must treat information related to a student's disability and accommodations as confidential information.<sup>213</sup> It should only be shared with "individuals who are privileged to receive such information on a need-to-know basis."<sup>214</sup> However, common educational practices result in frequent disclosures of students' confidential disability information. For example, when students are required to deliver accommodation letters to their professors, those professors may force a conversation about the accommodations and require students to disclose more than the content of the letters.

Practices related to testing accommodations also result in disclosure. Schools often designate one room as the location in which accommodated students take their exams, while unaccommodated students all take their exams in another designated room. The existence and location of the accommodated testing room is no secret. As a result, by virtue of their absence from the main room, a student who takes an exam in the accommodated room discloses to their classmates that they are disabled and receive a specific form of accommodation.<sup>215</sup>

---

213. Rothstein, *supra* note 141, at 641.

214. Evan R. Seamone, *In the Trenches of Legal Academia: Recognizing and Responding to the Mental Health Needs of Law Students Who Have Served in the Nation's Armed Forces*, 46 J.L. & EDUC. 313, 365–66 (2017); Daggett, *supra* note 138, at 571–72 (stating that student disability information is subject to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, but that FERPA's "legitimate educational interest" exception authorizes disclosure of the information in the accommodations context).

215. It has been suggested to me that students do not notice their classmates' absence from the main testing room. My students have shared that the location of the accommodated exam room is no secret, rendering disclosure inevitable. Testing accommodations inspire virulent stigma that acts as peer pressure, disincentivizing students who need testing accommodations from seeking them.

Colleges and universities could develop stricter policies to protect student information. For now, the reasonable accommodation process does little to protect disabled students' privacy.

*B. Hostile Work and Educational Environments*

The social stigma that employees and students with disabilities experience is pervasive, reminiscent of the type of widespread harassment that can form the basis of hostile work environment or hostile educational environment claims.

A hostile work environment claim under the ADA requires the plaintiff to prove that:

- (1) she is disabled or is perceived as disabled; (2) she was subjected to unwelcome harassment; (3) the harassment occurred because of her disability or the perception that she was disabled; (4) the harassment affected a term, condition, or privilege of employment; and (5) there is a basis for holding the employer liable for the creation of the hostile work environment.<sup>216</sup>

The fourth element presents the greatest obstacle to using accommodation discrimination as the basis for a hostile work environment claim. To show that the harassment "affected a term, condition, or privilege of employment, . . . a plaintiff must show that her 'workplace [wa]s permeated with discriminatory intimidation, ridicule, and insult that [wa]s sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment.'"<sup>217</sup> "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment."<sup>218</sup> The accommodation discrimination described herein is pervasive across American workplaces, but likely too isolated in individual cases.<sup>219</sup>

---

216. *Floyd v. Lee*, 85 F. Supp. 3d 482, 516–17 (D.D.C. 2015) (quoting *Floyd v. Lee*, 968 F. Supp. 2d 308, 328 (D.D.C. 2013)).

217. *Id.* at 517 (quoting *Grosdidier v. Broad. Bd. of Governors*, 709 F.3d 19, 24 (D.D.C. 2013)).

218. *Id.* (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

219. Reasonable accommodations are relevant to hostile work environment claims, but only if accommodations are denied. *Id.* at 518.

Not all courts recognize hostile learning environment claims.<sup>220</sup> In jurisdictions that do, the elements of a hostile learning environment claim track the elements of a hostile work environment claim.<sup>221</sup>

The bar set by the few cases addressing hostile learning environments is high. In *Newell v. Central Michigan University*, the Sixth Circuit focused on whether the plaintiff experienced “severe and pervasive harassment on the basis of her disability.”<sup>222</sup> In affirming the district court’s conclusion that “no reasonable juror could find that Newell subjectively regarded her educational environment as abusive,”<sup>223</sup> the Sixth Circuit endorsed this aspect of the lower court’s reasoning:

Plaintiff does not allege that her scholastic performance dropped as a result of her requests for accommodation or the alleged acts of retaliation by CMU staff. Rather, Plaintiff maintained a 3.67 GPA. Plaintiff contends that she is currently on medical leave, but this medical leave is taking place after a full semester in which her requested accommodations were granted. Plaintiff claims that she intends to return to CMU once she is physically able to do so. Plaintiff does not provide evidence that she was humiliated, received discrimination based physical threats, or that she required psychological therapy due to her experience at CMU.<sup>224</sup>

Like the disabled students in this Article, the plaintiff in *Newell* received accommodations, which the *Newell* court found to be inconsistent with a hostile learning environment. *Newell*’s academic success also counted against her claim, as did her perseverance.

---

220. *Stevens v. Brigham Young Univ.*, 588 F. Supp. 3d 1117, 1132 (D. Idaho 2022) (stating that the claim is not recognized in the Ninth Circuit); *Newell v. Cent. Mich. Univ. Bd. of Trs.*, No. 20-1864, 2021 WL 3929220, at \*10 (6th Cir. Sept. 2, 2021) (noting the district court’s observation that “[t]here does not appear to be a claim of ‘hostile education environment’ recognized by the Sixth Circuit’ under the ADA or Rehabilitation Act” (quoting *Newell v. Cent. Mich. Univ. Bd. of Trs.*, No. 19-11988, 2020 WL 4584050, at \*13 (E.D. Mich. Aug. 10, 2020))).

221. *See Guckenberger v. Bos. Univ.*, 957 F. Supp. 306, 314 (D. Mass. 1997) (“[T]o state a cognizable claim for hostile learning environment harassment under the ADA and Rehabilitation Act, a plaintiff must allege: (1) that she is a member of a protected group, (2) that she has been subject to unwelcome harassment, (3) that the harassment is based on a protected characteristic, her disability, (4) that the harassment is sufficiently severe or pervasive that it alters the conditions of her education and creates an abusive educational environment, and (5) that there is a basis for institutional liability.”).

222. *Newell*, 2021 WL 3929220, at \*10.

223. *Id.*

224. *Id.* at \*10–11.

Students with disabilities are familiar with circumstances that require resilience. Their ability to obtain accommodations and to adapt and thrive despite harassment, should not preclude a finding that an educational environment is hostile.

However, accommodation discrimination is not the typical kind of animosity captured by hostile work environment and hostile learning environment claims. This theory of liability is also an imperfect match for accommodation discrimination.

### C. Failure to Accommodate

Failure to accommodate a qualified person with disabilities is a form of disability discrimination unless the accommodation would place an undue burden on the covered entity. In both employment and higher education settings, failure to accommodate claims require proof of the following elements: (1) that the plaintiff is disabled; (2) that the plaintiff is otherwise qualified; and (3) that the plaintiff requested a reasonable accommodation.<sup>225</sup> A typical failure to accommodate claim involves an express refusal to accommodate,<sup>226</sup> which would preclude claims based on accommodations that have been granted but not implemented.

However, at least one court has recognized a failure to accommodate claim when accommodations are granted but neither implemented nor enforced. In *Enica v. Principi*,<sup>227</sup> the First Circuit held that when a disabled employee repeatedly complains to her employer that her accommodations are not being followed, the employer acts unreasonably by failing to take additional steps to ensure accommodation.<sup>228</sup>

Registered Nurse Lucia Enica was disabled as a result of nerve damage and paralysis in her right leg, arthritis, and ankylosis.<sup>229</sup> In 1994, Enica was hired as a registered nurse of psychiatry at a Veterans Affairs (“VA”) hospital in Jamaica Plain, Massachusetts,<sup>230</sup> where she provided “basic care for patients with physical and emotional needs.”<sup>231</sup>

---

225. *Exby-Stolley v. Bd. of Cnty. Comm’rs*, 979 F.3d 784, 792 (10th Cir. 2020) (en banc); *Jin Choi v. Univ. of Tex. Health Sci. Ctr.*, 633 F. Appx 214, 215 (5th Cir. 2015) (per curiam).

226. *See, e.g., Beck v. Univ. of Wis. Bd. of Regents*, 75 F.3d 1130, 1134 (7th Cir. 1996).

227. 544 F.3d 328 (1st Cir. 2008).

228. *Id.* at 343.

229. *Id.* at 331–32.

230. *Id.* at 332.

231. *Id.*

In 1996, following a transfer to a different psychiatric unit, Enica “was asked to push a patient on a stretcher to and from an electric compulsive shock therapy . . . room and to assist him into bed.”<sup>232</sup> Enica explained that she could not.<sup>233</sup> Subsequent medical evaluations recommended limiting the amount Enica would lift, carry, or push to forty-five pounds.<sup>234</sup>

The VA claimed that after it became aware of Enica’s lifting restrictions, it modified Enica’s duties and excused her from carrying or pushing more than forty-five pounds, but Enica claimed that she was still asked to perform tasks that exceeded those limitations.<sup>235</sup> The First Circuit agreed with Enica, finding that from 1996 to approximately May 2002, she was continuously required to perform tasks that her accommodations excused her from performing.<sup>236</sup>

However, the VA’s actions during that time period did not give rise to a failure to accommodate claim because Enica “continued performing her duties . . . without incident or objection.”<sup>237</sup> The VA was not responsible for “failing to correct an inadequate accommodation” about which Enica did not complain.<sup>238</sup> Though “there may be situations where an employee feels too intimidated to object to an employer’s refusal to accommodate,” no such facts were present.<sup>239</sup> Therefore, the court affirmed the district court’s grant of summary judgment as to this failure to accommodate claim.<sup>240</sup>

The court reversed the grant of summary judgment with respect to a second failure to accommodate claim arising out of the following facts.<sup>241</sup> Around June 28, 2002, following her transfer to yet another unit in West Roxbury, the VA modified Enica’s duties so that she would not be forced to participate in “the physical aspect of any crisis intervention” or walk long distances.<sup>242</sup> However, on her first day in West Roxbury, Enica’s supervisors pressured her to participate in

---

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* at 332–33.

236. *Id.* at 344.

237. *Id.* at 340.

238. *Id.*

239. *Id.* at 340 n.14.

240. *Id.* at 344.

241. *Id.* at 344 (finding sufficient evidence in the record “to establish a triable issue as to whether the VA failed to implement” Enica’s 2002 accommodation requests).

242. *Id.* at 333–34.

walking rounds throughout the entire hospital,<sup>243</sup> despite her objections.<sup>244</sup> “As a result, the pain in Enica’s leg and back worsened,” making it difficult for her to walk.<sup>245</sup>

In August 2022, working with her attorney, Enica complained to the VA that the provided accommodations were not adhered to and that the walking rounds were causing her “increased pain and risking further disability.”<sup>246</sup> In September 2002, Enica’s pain was so intense that she almost fell, and she was placed on leave.<sup>247</sup> Her injuries were caused by excessive walking at work, and as a result, she was awarded worker’s compensation benefits.<sup>248</sup> When she returned to work, Enica was again asked to perform tasks she was physically unable to manage.<sup>249</sup> Enica was later reassigned to a position where she was not required to walk, lift, bend, or carry.<sup>250</sup>

The court found a triable issue of fact as to whether the VA was liable for failure to accommodate Enica during this second timeframe.<sup>251</sup> “[O]nce an employer agrees to provide a particular accommodation,” the court explained, “it must act reasonably in implementing said accommodation.”<sup>252</sup> The VA acted unreasonably because Enica repeatedly notified the VA that her reasonable accommodations were not being followed.<sup>253</sup> The VA’s actions “cast into doubt whether the VA made any effort, or had any intention, to implement the accommodation to which they had agreed a few days prior.”<sup>254</sup> A reasonable jury could find that the VA failed to fully implement Enica’s agreed-to accommodations “once it became clear that the provided accommodations were insufficient.”<sup>255</sup>

---

243. *Id.* at 334.

244. *Id.* at 342–43.

245. *Id.* at 334.

246. *Id.*

247. *Id.* at 335.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.* at 344.

252. *Id.* at 342.

253. *See id.* at 343 (finding that a reasonable factfinder could conclude that the VA violated the Rehabilitation Act when it did not “fully . . . implement the accommodations it had agreed to or provide a reasonable response once it became clear that the provided accommodations were insufficient”).

254. *Id.*

255. *Id.*

*Enica* is of little value to most employees and students with disabilities. First, it precludes failure to accommodate claims even when granted accommodations are not implemented unless a disabled person repeatedly complains about the lack of implementation. The failure to complain is excused only if the unaccommodated individual is too intimidated to complain.

Requiring those who have already obtained accommodations to also report an institution's failure to accommodate creates disability admin reminiscent of the Prison Litigation Reform Act's ("PLRA")<sup>256</sup> rigorous administrative exhaustion requirement.<sup>257</sup> Moreover, at work and at school, people with disabilities have set tasks to complete with limited additional time to monitor and report legal compliance.<sup>258</sup> Though the *Enica* court was willing to excuse the failure to complain on the grounds of intimidation, that standard is vague and likely difficult to satisfy.<sup>259</sup>

Second, the circumstances in which a court will treat failure to implement granted accommodations as a failure to accommodate claim involve even more disability admin. The court found that *Enica* had provided the VA with sufficient notice that her accommodations were not being adhered to as a result of her repeated complaints.<sup>260</sup> *Enica* was also assisted by an attorney.<sup>261</sup> Continuing to work unaccommodated gave *Enica* additional opportunities to complain, but it also injured her so severely that she was placed on leave and received workers' compensation benefits for her injuries.<sup>262</sup> To create a persuasive complaint history like *Enica*'s, employees and students with disabilities must continue to work unaccommodated and complain about each accommodation failure, even if a lack of accommodations hurts them physically.

As a result of this standard, failure to accommodate claims based on the failure to implement a granted reasonable accommodation also do

---

256. 42 U.S.C. § 1997e (2018).

257. *Varner v. Shepard*, 11 F.4th 1252, 1257 (11th Cir. 2021) (quoting 42 U.S.C. § 1997e(a)).

258. See *Emens*, *supra* note 21, at 2331–32 and accompanying text.

259. The PLRA also excuses administrative exhaustion "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Varner*, 11 F.4th at 1258 (quoting *Ross v. Blake*, 578 U.S. 632, 644 (2016)).

260. *Enica*, 544 F.3d at 343.

261. *Id.* at 334.

262. *Id.* at 335.

not provide adequate legal remedy for the inequality described in this Article.<sup>263</sup>

#### CONCLUSION

Only a shift in perspective can reveal the full scope of the reasonable accommodation process and its failures. This Article honors the lived experiences of people with disabilities, sharing their observations about a process that was designed to facilitate inclusion but instead fosters inequality.

The law treats a granted reasonable accommodation as evidence of a system that works. But as this Article demonstrates, for employees with disabilities, accommodations create disclosure anxiety and invite resentment. Disabled employees must take on the extra, unpaid work of enforcing their own accommodations.

This Article also demonstrates that students with disabilities contend with disclosure anxiety and the prohibitive cost of medical documentation. They too are expected to implement their own accommodations, at times serving as a university's unpaid messenger and agent, delivering letters describing their reasonable accommodations to those who implement them. The recipients of these letters are the students' own professors, who may question a student's disabilities and their need for accommodation. Accommodated students also endure stigma from their classmates who claim that accommodations create an unfair advantage.

In some ways, accommodation discrimination has a more profound impact on students with disabilities than it does on employees with disabilities. Education provides people with disabilities access to well-

---

263. Theories of discrimination with adverse action requirements are beyond the scope of this Article. *See, e.g.*, *Shinabargar v. Bd. of Trs. of the Univ. of D.C.*, 164 F. Supp. 3d 1, 16 (D.D.C. 2016) (stating that “[t]o prevail on a retaliation claim under both the ADA and Section 504 of the Rehabilitation Act, the plaintiff must establish . . . ‘(1) she engaged in a protected activity, (2) the defendant took a materially adverse action against her, and (3) there was a causal connection between the protected activity and the adverse action’” (quoting *Kimmel v. Gallaudet Univ.*, 639 F. Supp. 2d 34, 43 (D.D.C. 2009))). In the context of employment, an adverse action is “a materially adverse change in the terms, privileges, duration and conditions of employment,” such as “a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, [or] significantly diminished material responsibilities.” *Zavala v. Cornell Univ.*, 9 F. Supp. 3d 213, 218 (N.D.N.Y. 2014). In higher education, a suspension is an adverse action. *Shinabargar*, 164 F. Supp. 3d at 17. The accommodation discrimination described herein does not involve the kind of adverse action the law recognizes.

paid, challenging work. But students with disabilities need accommodations to benefit from the education and training schools offer. Without reasonable accommodation enforcement in higher education, students with disabilities suffer as students and compromise their future employment and potential for self-sufficiency.

Jennifer Shinall's recent examination of disabled workers' ability to access "pandemic-relevant" reasonable accommodations highlights the urgent need to improve access to reasonable accommodations and eliminate accommodation discrimination in higher education.<sup>264</sup> Shinall analyzed disabled and nondisabled workers' access to "[w]orking from home, flexible working hours, and leave allowances" before the outbreak of COVID-19 to predict disabled workers' ability to access these pandemic-relevant accommodations in the current labor market.<sup>265</sup> In theory, disabled workers should have had access to pandemic-relevant accommodations before the pandemic because of their eligibility for reasonable accommodations under the ADA.<sup>266</sup>

However, Shinall found that disabled workers were less likely than nondisabled workers to obtain pandemic-relevant accommodations due to occupational and industry segregation.<sup>267</sup> "Disabled workers are more likely to work in many of the occupations considered most dangerous during the pandemic."<sup>268</sup> They are over-represented in "low-flexibility jobs," including "food preparation and serving, production occupations, and maintenance occupations."<sup>269</sup> Jobs that require "working with others" and a fixed work location and hours do not suddenly become flexible as a result of a pandemic.<sup>270</sup>

Shinall's assessment of disabled workers' pre-pandemic access to pandemic-relevant leave and flexibility "raises serious concerns about disabled workers' abilities to keep their jobs, remain in the labor

---

264. Jennifer Bennett Shinall, *Without Accommodation*, 97 IND. L.J. 1147, 1151 (2022).

265. *Id.* at 1150–52. Shinall studied data from the American Time Use Survey ("ATUS") Leave and Job Flexibilities Module, administered by the Bureau of Labor Statistics. *Id.* at 1151 (stating that "ATUS surveys administered in 2017 and 2018 . . . asked participants about work schedules, work location, access to workplace leave, and use of workplace benefits," and any "limiting conditions," and can therefore "provide unique insight into the comparative, pandemic-relevant workplace accommodations received by workers with limiting conditions immediately before COVID-19").

266. *Id.* at 1150–51.

267. *Id.* at 1151–52.

268. *Id.* at 1191.

269. *Id.* at 1176.

270. *Id.* at 1177.

market, and maintain their health during the current pandemic,” as well as their vulnerability during future pandemics.<sup>271</sup> A disabled worker in a low-flexibility position who needs pandemic-relevant accommodations must choose between protecting their health and keeping their job.<sup>272</sup>

The positions most likely to be amenable to pandemic-relevant accommodations are “higher paying and white-collar,” but also have specific educational requirements.<sup>273</sup> People with disabilities’ underrepresentation in these higher-paid white-collar positions is the result of “financial and institutional barriers” that students with disabilities face in higher education.<sup>274</sup> Accommodation discrimination is one such barrier.

Shinall makes several recommendations to increase disabled workers’ representation in high-flexibility workplaces, including “greater financial resources devoted toward increasing representation of individuals with disabilities in higher education.”<sup>275</sup>

As Shinall’s research demonstrates, eliminating accommodation discrimination in higher education could improve graduation rates and provide access to a greater variety of training, thereby increasing people with disabilities’ ability to obtain flexible, well-paid, safe work.<sup>276</sup>

For now, a system that grants accommodations is not enough. Having a reasonable accommodation request granted is a Pyrrhic victory. If the price is disclosure of intimate personal details, social stigma, and unpaid enforcement labor, is a reasonable accommodation worth the trouble? Many who are eligible for accommodations have decided that it is not. Acutely aware of the

---

271. *Id.* at 1152.

272. *Id.* at 1183.

273. *Id.* at 1187–88.

274. *Id.* at 1191; *see also id.* at 1188 (“Rates of bachelor’s degree attainment for individuals with disabilities are less than half the rates for individuals without disabilities in the United States.”).

275. *Id.* at 1191 (stating that “[o]nly with higher rates of higher education will more disabled workers be able to move into white-collar jobs from blue-collar jobs—and, as a result, move out of jobs that are without accommodation into jobs that are with accommodation”).

276. Of course, better-educated students might find employment in workplaces like those described herein that engage in accommodation discrimination. But even if academia and the law do not change, increased educational opportunities would create additional employment options and the potential to enter a safer and more lucrative occupation.

process's failures, they forego the accommodations they are entitled to and need.<sup>277</sup>

As a result, people with disabilities attend institutes of higher education and toil away at work without the equality the ADA promises. If they are unable to work or attend school unaccommodated, they depart from the very environments the ADA and reasonable accommodations were intended to open up to them. Their absence matters.

---

277. The experiences recounted in this Article are deeply familiar to me. I did not seek reasonable accommodations until law school even though I have been disabled since childhood as a result of a chronic autoimmune disease. I have never experienced remission. Despite understanding my legal eligibility for accommodations, I struggled to identify as a person with disabilities, and I went to great lengths to keep my accommodations and my medical issues secret. I feared that my professors would consider me ill-suited for the practice of law and that my accommodations (five-minute breaks every hour to stretch my arthritic hands) would result in accusations that my good grades were the result of an unfair advantage. Katherine Macfarlane, *Making Peace with Testing Accommodations*, Ms. JD (Jan. 28, 2018), <https://ms-jd.org/blog/article/making-peace-with-testing-accommodations> [<https://perma.cc/47FG-VYFG>]. When I left practice for academia, I decided to begin identifying as a person with disabilities and became involved in rewarding disability and patient rights advocacy, testifying in front of a state legislature and participating in a Congressional Arthritis Caucus briefing panel in Washington, D.C. My openness has led professors and students with disabilities from around the country to reach out to me for advice. I am honored by their trust and glad to help. However, I am frank with them: I cannot say that any of my accommodations were worth the price I paid in time, money, and dignity. See Griffin Basas, *supra* note 22, at 63 (describing how disabled female law school graduates struggle to find workplaces “where they could be respected as equals and have their accommodation needs met” and how “they were in search of dignified flexibility”).